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JUN 13 2005

In re Application of
David Naccache et al.
Application No. 10/817,453
Filed: April 5, 2004
Atty Docket No. 032326-050

OFFICE OF PETITIONS

ON PETITION

This is in response to the petition under 37 CFR 1.47(a) filed January 24, 2005.

The petition is **DISMISSED**.

Upon application, petitioners submitted the oath or declaration from parent application no. 09/377,666, filed on August 19, 1999, of which the instant application is a continuation, but was not executed by joint inventor Francoise Levy-Dit-Vehel. On June 22, 2004, the Office mailed a Notice to File Missing Parts of Nonprovisional Application, which set forth a two (2) month period to submit the required filing fee, executed oath or declaration and surcharge for their late filing. In response, on January 24, 2005, the instant petition, fees, five month extension of time request and declaration submitted by Phillip Brun, an employee of the assignee and on behalf of the assignee.

Mr. Brun outlines the events that transpired when an attempt to present the application in the parent case to Francoise Levy-Dit-Vehel resulted in a refusal by the non-signing inventor to cooperate with the filing of that application.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor. This petition lacks compliance with items (1), (2) and (4).

Pursuant to 37 CFR 1.63:

(d)(1) A newly executed oath or declaration is not required under § 1.51(b)(2) and § 1.53(f) in a continuation or divisional application provided that:

- (i) The prior nonprovisional application contained an oath or declaration as prescribed by paragraphs (a) through (c) of this section;
- (ii) The continuation or divisional application was filed by all or by

fewer than all of the inventors named in the prior application;

(iii) The specification and drawings filed in the continuation or divisional application contain no matter that would have been new matter in the prior application; and

(iv) A copy of the executed oath or declaration submitted under this paragraph for a continuation or divisional application must be accompanied by a statement requesting the deletion of the name or names of the person or persons who are not inventors in the continuation or divisional application.

Unfortunately, status under 37 CFR 1.47(a) cannot be granted using an unexecuted oath or declaration from a prior filed application unless and of course it can be established that status under 37 CFR 1.47(a) was accorded in the prior filed application.

Petitioners have not submitted a fully executed oath or declaration from parent application no. 09/377,666, filed August 19, 1999, or a copy of a decision which accorded 37 CFR § 1.47(a) status to the prior application

In view thereof, petitioner's reply, although in response to the Notice mailed June 22, 2004, is incomplete and as such, the application became abandoned as of the expiration of the extendable time period.

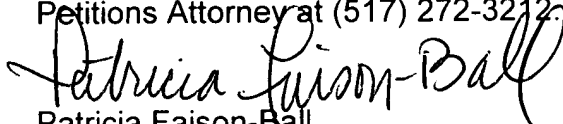
Under the circumstances of this application, petitioner must file a petition to revive under 37 CFR 1.137 and a proper response to the Notice to File Missing Parts within TWO (2) months from the mailing date of this decision, correcting the above-noted deficiencies.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
 Commissioner for Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

By FAX: (703) 872-9306
 Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned
Petitions Attorney at (517) 272-3212.


Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions